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Office Supreme Court U.S.
FILED
DEC 15 1902
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

ROBERT A. CHESEBROUGH,
Plaintiff in Error,
v.
THE UNITED STATES,
Defendant in Error.

Motion to Advance.
No. ~~194~~ 152.

UNITED STATES OF AMERICA, *ss*:

The plaintiff in error respectfully moves the Court to advance the above-entitled cause upon the docket and set it down for hearing as early as possible during the month of October, 1903, or at such other early date as shall be the most convenient to the Court, on the ground that it raises the question as to the constitutionality of the transfer tax on realty imposed by the War Revenue Act of June 13, 1898.

As a further reason for requesting the Honorable Court to advance the above-entitled cause upon the docket, the plaintiff in error alleges that it is the test case upon which the validity of all such impositions will probably be determined; that under the statute but two years is allowed within which to bring suit in the Federal courts after the rejection by the Commissioner of Internal Revenue of claims for refund of such impositions; that the said limitation has now been running against a large number of such rejected

claims for refund ; and that an early hearing and determination of the above-entitled cause will prevent the need of bringing suit upon a large number of such rejected claims.

This cause was brought in the United States District Court for the Southern District of New York for refund of amounts paid as stamp taxes on the transfers of certain real estate. A demurrer by defendant was entered on the following ground : " That this petition does not state sufficient facts to constitutue a claim on the part of the claimant against the United States." On the 12th day of June, 1902, a judgment was entered in the office of the Clerk of the United States District Court for the Southern District of New York sustaining said demurrer interposed by the defendant.

On or about the 24th day of June, 1902, a petition for writ of error to the Supreme Court of the United States was duly presented to the United States District Court for the Southern District of New York, together with an assignment of errors and a bond for damages and costs. Thereafter on the 3d day of July, 1902, a writ of error was allowed by the Hon. George B. Adams, United States District Judge, and on the same day a citation was issued, returnable to the United States Supreme Court at the City of Washington, on the 21st day of July, 1902. The petition for writ of error, assignment of errors, bond, citation and writ of error were duly filed in the office of the Clerk of the United States District Court by a representative of the firm of Coudert Brothers, with instructions to the clerk to have the papers in the matter transferred to Washington. Thereafter, on about the 18th day of October, the plaintiff in error learned for the first time that the record in this case had not been received by the clerk of the United States Supreme Court, and upon investigation at the office of the Clerk of the District Court for the Southern District of New York it was found that through some

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error the record in question had never been forwarded. By reason of the said error the above-entitled cause has lost the position on the calendar of this Honorable Court to which it would otherwise have been assigned, and to avoid the delay resulting therefrom, for which plaintiff in error respectfully submits he is in no way responsible, and in view of the importance of the question here raised, he now files the above motion.

The Honorable Attorney-General has expressed his willingness to concur in the above motion.

COUDERT BROTHERS,
Attorneys for Plaintiff in Error.

December 15th, 1902.

F. R. Coudert, Jr.
of counsel.

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Livingston Middleditch Co., 65 Duane St. Telephone, Franklin 198.

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JAMES H. McKENNEY,
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IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1903.

ROBERT A. CHESEBROUGH,
Plaintiff in Error,

AGAINST

THE UNITED STATES,
Defendant in Error.

No. 152.
Motion to
Re-assign.

Now comes the plaintiff in error, and respectfully moves this Court to continue the argument in this cause, and re-assign it for hearing upon such day subsequent to November 1st, 1903, as may be most convenient to the Court.

This is an action against the United States under Act of March 3rd, 1887, for the recovery of Six hundred Dollars, the equivalent of which amount in stamps was affixed upon a certain deed of conveyance of real estate situated at Nos. 21 to 24 State Street, in the Borough of Manhattan, City of New York, from the plaintiff in error to the Chesebrough Building Company, executed June 5th, 1900, which stamps were affixed to said deed of conveyance under compulsion of the Act of Congress of June 13th, 1898, entitled "An Act to Provide Ways and Means to meet War Expenditures and for other Purposes." A demurrer to the petition interposed by the United States Attorney for the Southern District

of New York was sustained by the United States District Court for said District, and from the judgment sustaining said demurrer, a writ of error was allowed to this Court.

That upon motion of the attorneys for the plaintiff in error, said cause was assigned to be heard in October, 1903, and upon inquiry at the office of the Clerk it has been ascertained that said cause will come on for hearing within two or three days after the Court convenes.

That Frederic R. Coudert, Jr., of counsel for plaintiff in error is in personal charge of this cause and will present the questions involved herein, namely, as to the constitutionality of the transfer tax on realty imposed by the aforesaid Revenue Act of June 13th, 1898, to this court. Owing to poor health he was obliged to go abroad where he is at present and is not expected to return until about the 24th of October, 1903.

For the reasons above stated the plaintiff in error respectfully moves this court for a continuance and re-assignment of the hearing in this cause.

We understand that the Honorable Attorney-General joins in this motion.

New York, September 18, 1903.

Respectfully submitted,

COUDERT BROTHERS,
Attorneys for Plaintiff in Error.

FREDERIC R. COUDERT, JR.,
PAUL FULLER,
of Counsel.